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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

MAURICE COLBURN MARSHMAN,

Defendant and Appellant.

C044785

(Super. Ct. No.
03F1426)

Defendant Maurice Colburn Marshman entered a negotiated plea of guilty to two counts of lewd acts upon a minor (Pen. Code, § 288, subd. (a))¹ and admitted the offenses were against more than one victim (§ 667.61, subd. (b)). In exchange for his plea, the remaining 11 counts and allegations of aggravated circumstances were dismissed.

The trial court sentenced defendant to the stipulated term of two concurrent 15-years-to-life terms; imposed a restitution fine of \$3,000 (§ 1202.4, subd. (b)) and suspended an additional restitution fine in the same amount pending successful

¹ All further statutory references are to the Penal Code unless otherwise indicated.

completion of parole (§ 1202.45); and imposed a sex offender fine in the amount of \$540 (§ 290.3). Defendant was ordered to submit blood and saliva samples and thumb and palm prints pursuant to section 296 and to register as a sex offender pursuant to section 290. Defendant received a total of 197 days of presentence custody credit. (§ 2933.1.)

Defendant appeals. He did not obtain a certificate of probable cause. (§ 1237.5.)

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant. However, we have discovered a sentencing error that must be corrected.

Penal Code section 290.3, subdivision (a) provides, in pertinent part: "Every person who is convicted of any offense specified in subdivision (a) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for violation of the underlying offense, be punished by a fine of two hundred dollars (\$200) upon the first conviction or a fine of three hundred dollars (\$300) upon the second and each subsequent

conviction, unless the court determines that the defendant does not have the ability to pay the fine." The fine pursuant to section 290.3, subdivision (a) is mandatory, as are penalty assessments pursuant to Penal Code section 1464 and Government Code section 76000. (*People v. Terrell* (1999) 69 Cal.App.4th 1246, 1256-1257 (*Terrell*); *People v. Martinez* (1998) 65 Cal.App.4th 1511, 1520-1522 (*Martinez*); *People v. Sierra* (1995) 37 Cal.App.4th 1690, 1694-1696.)

Although defendant was convicted of two counts of lewd or lascivious acts upon a child under the age of 14 (§ 288, subd. (a)), an offense specified in section 290, subdivision (a), the trial court imposed a single fine of \$540.² The trial court made no express findings on the record regarding defendant's ability to pay the fine and the People made no objection at sentencing.

On a silent record, we would presume the trial court resolved the issue regarding defendant's ability to pay the fine in favor of not imposing the fine. (*People v. Moran* (1970) 1 Cal.3d 755, 762; *People v. Young* (1991) 228 Cal.App.3d 171, 186.) However, in this case, the court implicitly found defendant *did* have the ability to pay the sex offender fine. We therefore presume the trial court erred in calculating the

² At sentencing, the trial court stated defendant would "[a]lso have to pay a \$500 -- \$540 fine pursuant to Penal Code section 290.3." The \$540 amount appears to be the \$200 fine for the first conviction of Penal Code section 288, subdivision (a), plus mandatory penalty assessments of \$200 (Pen. Code, § 1464) and \$140 (Gov. Code, § 76000).

correct amount of the sex offender fine. (Cf. *Martinez, supra*, 65 Cal.App.4th at pp. 1516-1519.)

The trial court's failure to impose the correct amount of the sex offender fine is an unauthorized sentence. (*Terrell, supra*, 69 Cal.App.4th at pp. 1256-1257.) An unauthorized sentence may be corrected at any time whether or not there was an objection in the trial court. (*People v. Smith* (2001) 24 Cal.4th 849, 854.) We shall modify the judgment to impose \$500 in fines pursuant to Penal Code section 290.3 and the \$500 state (Pen. Code, § 1464) and \$350 county (Gov. Code, § 76000) penalty assessments.

In the interest of judicial economy, we modify the judgment without requesting supplemental briefing. A party claiming to be aggrieved by this procedure may petition for rehearing. (Gov. Code, § 68081.)

DISPOSITION

The judgment is modified to impose sex offender fines of \$500 plus penalty assessments. The trial court is directed to prepare an amended abstract of judgment reflecting this modification and to send a certified copy of said amended abstract to the Department of Corrections. As modified, the judgment is affirmed.

We concur: _____ RAYE _____, J.

_____ BLEASE _____, Acting P.J.

_____ ROBIE _____, J.